

1 For the Defendant
2 City of Chicago:

MS. KELLY ANN KRAUCHUN
ROCK FUSCO & CONNELLY
333 West Wacker Drive
Chicago, Illinois 60606
312-494-1000

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22 Court Reporter:

FEDERAL OFFICIAL COURT REPORTER
MS. KRISTA BURGESON
219 South Dearborn Street
Chicago, Illinois 60604
312-435-5567
krista_burgeson@ilnd.uscourts.gov

09:53:54 1 THE CLERK: 23 C 1737, Hernandez, et al., versus
09:53:59 2 Guevara, et al., for motion hearing.
09:54:09 3 MR. STARR: Good morning, Your Honor. Sean Starr,
09:54:11 4 S-t-a-r-r S-e-a-n, on behalf of plaintiffs, Juan and Rosendo
09:54:17 5 Hernandez.
09:54:17 6 THE COURT: Good morning.
09:54:19 7 MS. ROMELFANGER: Good morning, Your Honor. Alison
09:54:26 8 Romelfanger on behalf of defendants, Bemis, Biebel, and
09:54:30 9 Special Representative Yanow.
09:54:32 10 MS. GONZALEZ: Good morning, Your Honor. Krystal
09:54:34 11 Gonzalez on behalf of defendant, Guevara.
09:54:37 12 MS. KRAUCHUN: Good morning, Your Honor. Kelly
09:54:39 13 Krauchun on behalf of the City of Chicago.
09:54:41 14 MR. GAINER: Good morning. Brian Gainer on behalf of
09:54:43 15 defendant, Miedzianowski.
09:54:45 16 THE COURT: Good morning, everyone.
09:54:47 17 Lots of things to run through this morning.
09:54:53 18 I don't think I need to address the docket entry 121,
09:54:57 19 the motion to produce agreed upon documents, because I feel
09:55:01 20 like I just got an update, and then you are supposed to be
09:55:04 21 back in December on that one.
09:55:07 22 I have got the motion to quash officers' subpoenas,
09:55:11 23 docket entry 126. I have reviewed the filings and I am going
09:55:15 24 to grant it in part and deny it in part.
09:55:19 25 Generally, as to the motions, I think the officers

09:55:23 1 have shown that they are potentially relevant to the issues in
09:55:27 2 the case. I think everyone understands discovery is broad
09:55:30 3 with respect to the privacy implications for the conversations
09:55:34 4 that they seek. I find it hard to find a reason to afford a
09:55:39 5 reasonable expectation of any privacy when you are told that
09:55:45 6 the calls are being recorded. So those subpoenas can be
09:55:48 7 issued with respect to that.

09:55:54 8 The grant, however, comes with respect to attorney
09:55:57 9 calls. I understand you have cited another District Court
09:55:59 10 case essentially saying that calls with attorneys that are
09:56:03 11 recorded require other -- or can be turned over, but I view
09:56:12 12 that as close to sacrosanct, and you are just not going to get
09:56:18 13 that absence and additional showing. I haven't seen a Seventh
09:56:27 14 Circuit case that goes that way. I don't know whether there
09:56:31 15 were any alternatives. And so this will just follow the
09:56:34 16 typical route where if calls are withheld because they are
09:56:38 17 with attorneys, produce a privilege log and substantiate it
09:56:43 18 and you just don't get it.

09:56:44 19 So that is 126, everything but the attorney/client
09:56:49 20 calls.

09:56:51 21 MR. STARR: Could I ask a question, Your Honor?

09:56:51 22 THE COURT: Sure.

09:56:53 23 MR. STARR: Does that include the written
09:56:54 24 communications as well that they were seeking?

09:56:57 25 THE COURT: With counsel?

09:56:57 1 MR. STARR: No, with all the people they listed in
09:57:00 2 their subpoenas that they were seeking, like electronic and
09:57:03 3 written communications that they may or may not have.
09:57:08 4 THE COURT: Yes, that extends to that as well.
09:57:10 5 MR. STARR: Is there any time limitation, timeframe
09:57:13 6 limitation, that the Court is putting on their subpoenas in
09:57:17 7 terms of what they are able to get from IDOC? And I apologize
09:57:21 8 about my voice, I woke up with this.
09:57:23 9 THE COURT: No problem.
09:57:24 10 MR. STARR: Sorry, I usually have a better voice.
09:57:26 11 THE COURT: I would imagine that anything
09:57:28 12 post-conviction is relevant, if he is talking about his
09:57:31 13 conviction.
09:57:33 14 MR. STARR: So is the Court's order that plaintiffs
09:57:36 15 should review the calls and produce anything that fits into
09:57:39 16 that category or -- they were seeking an incredibly wide
09:57:44 17 swath, and in our reply, and actually Ms. Romelfanger and I
09:57:49 18 talked about this briefly this morning, that --
09:57:49 19 THE COURT: My order is to produce relevant
09:57:52 20 documents. Whether you want to look at them before you
09:57:54 21 produce them, I can't tell you how to run your shop.
09:57:57 22 MR. STARR: Okay. So does plaintiff have an
09:57:59 23 opportunity to -- because there were a lot of calls that we
09:58:01 24 think, and I think the defendants agree in their motion, are
09:58:04 25 not going to be relevant, calls that don't effect damages,

09:58:08 1 calls that have nothing to do with the post-conviction
09:58:10 2 petition or proceedings. If there are private calls that
09:58:13 3 these plaintiffs had with their loved ones that don't touch on
09:58:18 4 those issues, are we able to review those first before turning
09:58:22 5 them over?

09:58:22 6 THE COURT: What is your position?

09:58:23 7 MS. ROMELFANGER: Your Honor, we didn't ask for a
09:58:25 8 single call with plaintiffs' family members. As we laid out
09:58:28 9 in our motion, they were all witnesses he called in his
09:58:31 10 criminal trial, witnesses that were in his post-conviction
09:58:34 11 proceedings, or their witnesses with the only link being
09:58:39 12 defendant Guevara, because they are all either 404(b)
09:58:42 13 witnesses or they also have lawsuits against Guevara, with the
09:58:48 14 exception I think of Matt Sobran (phonetic) and one other who
09:58:52 15 also do have reverse conviction cases.

09:58:54 16 So, we didn't ask for a single call or communication
09:58:58 17 with family members that would contain those private
09:59:02 18 communications.

09:59:02 19 THE COURT: Right, but I think his concern is a bit
09:59:04 20 broader. He wants to narrow it to a universe of
09:59:08 21 communications potentially related to the case.

09:59:12 22 MS. ROMELFANGER: Your Honor, I would be happy to
09:59:14 23 narrow my subpoena to ask IDOC to narrow the electronic
09:59:18 24 communications to just stuff about this case. I am happy to
09:59:22 25 do that to IDOC.

09:59:23 1 MR. STARR: I don't know how IDOC would possibly be
09:59:26 2 able to do that. They can't even tell us the quantity and
09:59:30 3 they certainly can't tell us the quality.

09:59:36 4 THE COURT: So the hesitation I have in allowing you
09:59:38 5 to take the first pass, not to slight you in any way, but I
09:59:43 6 understand the skepticism of opposing counsel saying, why
09:59:51 7 should they get to decide what is relevant and what is not.
09:59:51 8 It seems the appropriate mechanism to handle this would be to
09:59:53 9 conduct your privilege review as you normally would, but then
09:59:57 10 if documents go somewhere or aren't relevant to the case, you
10:00:00 11 would just seek to exclude them later.

10:00:04 12 MR. STARR: Documents and also communications, it is
10:00:08 13 our position, that oral communications, phone calls, would
10:00:10 14 fall into that category.

10:00:11 15 And if I misspoke and said family members earlier, I
10:00:14 16 meant loved ones. I mean, there are certainly calls with
10:00:16 17 ex-girlfriends and close family friends that maybe are not by
10:00:20 18 blood a relative but are certainly considered to be loved ones
10:00:23 19 of the plaintiffs.

10:00:24 20 THE COURT: You can review for privilege or work
10:00:26 21 product or any other privilege, but you won't do the relevance
10:00:31 22 review. You can object to the breadth of the subpoena but
10:00:37 23 really that is IDOC's objection since they are the ones
10:00:42 24 producing.

10:00:42 25 Does that answer your question?

10:00:43 1 MR. STARR: I believe so.

10:00:44 2 So we will get them first and review them for work

10:00:47 3 product and --

10:00:48 4 THE COURT: No.

10:00:49 5 If you think there is work product, but how can there

10:00:52 6 be work product if there is not an attorney in the

10:00:55 7 communication.

10:00:56 8 MR. STARR: I understand that, and I think you have

10:00:59 9 eliminated the access to the attorney calls if I understood

10:01:03 10 your ruling.

10:01:03 11 THE COURT: Correct.

10:01:04 12 MR. STARR: It is plaintiffs' position that the sheer

10:01:06 13 volume of calls, there is certainly going to be -- the vast

10:01:10 14 majority of calls will have no relevance whatsoever, but I

10:01:14 15 understand your order, Your Honor.

10:01:16 16 THE COURT: All right.

10:01:16 17 Then I have got 144, the motion to compel defendant

10:01:22 18 Miedzianowski to sit for a deposition.

10:01:27 19 MR. GAINER: Yes, sir.

10:01:28 20 THE COURT: Do you have a response?

10:01:29 21 MR. GAINER: I do.

10:01:30 22 My response is, as my response was to counsel when we

10:01:32 23 talked about this, I am trying to be pragmatic here.

10:01:36 24 Mr. Miedzianowski, unlike most defendants, or maybe

10:01:41 25 all defendants in these types of cases, is in prison for life.

10:01:45 1 There is very little leverage I have over him, or counsel has
10:01:49 2 over him, or really anyone has over him, to force him to do
10:01:54 3 anything, unfortunately.

10:01:56 4 THE COURT: That is not true entirely.

10:01:58 5 MR. GAINER: It is not true entirely.

10:02:00 6 THE COURT: He can be forced to sit in a room and if
10:02:03 7 he chooses to refuse to answer a question then we get into the
10:02:07 8 area of there is no way to force him or incentivize him, but
10:02:11 9 he can be produced for a deposition.

10:02:13 10 MR. GAINER: And we are not objecting to producing
10:02:16 11 him for his deposition. I want that to be very clear, and I
10:02:20 12 think it should be clear from my emails.

10:02:21 13 Mr. Miedzianowski is ready to sit for his deposition.
10:02:24 14 The sole factor hanging this up is video. He does not want to
10:02:29 15 be on video. The most that I can share with the Court about
10:02:34 16 his reasons is that he is concerned about publicity associated
10:02:38 17 with a videotaped deposition. I explained it to counsel
10:02:43 18 multiple times, and we talked about this. He is ready to
10:02:48 19 testify, and he will testify for the seven hours required by
10:02:52 20 the rules. He is literally a captive audience. He will come
10:02:59 21 out of his cell to testify if it is a deposition transcribed
10:03:04 22 by a court reporter. The video is the issue.

10:03:07 23 And if the true goal is to get his testimony, which
10:03:10 24 counsel has told me it is, then we can do that, it is the
10:03:15 25 video that is the issue.

10:03:17 1 MR. STARR: I will begin by saying certainly I think
10:03:20 2 in our motion I made it clear that Mr. Gainer said he would
10:03:23 3 sit for a deposition, it was just the video issue. We are
10:03:27 4 here before Your Honor today to address that.

10:03:28 5 Our concern, as we articulated I think in our motion,
10:03:32 6 is this is a 71 year old man that lives in not the most
10:03:36 7 healthy environment, this is a case that is multi-faceted and
10:03:40 8 has a lot of moving parts, multiple plaintiffs, multiple
10:03:43 9 defendants, it will be a while before we sit for a trial, I
10:03:47 10 believe. I can't be certain that he will be here.

10:03:50 11 So we want to take a videotaped deposition, which we
10:03:54 12 think is our right, and we think the Court has already ordered
10:03:56 13 we have the right to do, in order to preserve his testimony in
10:03:58 14 its most complete form. Written testimony, you know, no
10:04:04 15 concerns at all about court reporters' efforts to do their
10:04:08 16 jobs correctly, but a videotape is going to tell a further
10:04:12 17 tale. There are certainly other ways that we communicate as
10:04:14 18 human beings that go beyond the words that we say that are
10:04:16 19 then written down in a court reporter's court reporting
10:04:18 20 statement.

10:04:19 21 So, it is important for us to have it videotaped.
10:04:21 22 What if he doesn't want to come to trial and refuses to come
10:04:24 23 and testify at trial? We want a videotape that we can show to
10:04:28 24 the jury and if we have to impeach him at the trial or he
10:04:31 25 doesn't show up. We think that is within our right and what

10:04:34 1 we are seeking. We think this Court has the ability to order
10:04:38 2 that. And then if we go and sit in a room and he refuses to
10:04:41 3 testify we will have to come back and address it at that
10:04:45 4 point.

10:04:45 5 MR. GAINER: May I say two things in response to
10:04:47 6 that, Judge?

10:04:48 7 THE COURT: No.

10:04:52 8 I am going to exercise my discretion and not allow
10:04:55 9 the videotaped deposition. I am sympathetic to the security
10:05:02 10 risk identified concerning the publicity by -- surrounding
10:05:11 11 something like this. Essentially this case is -- this
10:05:14 12 defendant put people in jail wrongfully, and that defendant is
10:05:21 13 in jail. That probably is not something that is -- that
10:05:27 14 enhances his safety, should that resurface. I understand this
10:05:33 15 his case received a lot of publicity, years ago, but I see
10:05:38 16 that as an unnecessary risk to the defendant's well-being.

10:05:44 17 So you can take the deposition, but you can't
10:05:46 18 videotape it.

10:05:47 19 MR. STARR: Your Honor, can I just ask a question?
10:05:49 20 And this is alluded to in the motion.

10:05:51 21 Isn't there a way that we could enter a protective
10:05:55 22 order where the videotape becomes attorney's eyes only?

10:05:58 23 THE COURT: But then you come to trial and he doesn't
10:06:00 24 appear and you want to put the videotape up. And so no. You
10:06:04 25 can preserve the testimony through a written transcript, and

10:06:08 1 then you can read that transcript into the record.

10:06:11 2 MR. GAINER: Thank you, Judge.

10:06:18 3 THE COURT: The next one is the -- and hopefully that
10:06:21 4 extended sigh dealt with your hoarse voice and not -- -

10:06:24 5 MR. STARR: It did, Your Honor, certainly. And I
10:06:26 6 apologize.

10:06:27 7 THE COURT: Okay.

10:06:27 8 The next motion is docket entry 148, a motion to
10:06:32 9 extend fact discovery. There is a motion to extend the
10:06:36 10 timeline to respond, that is docket entry 150. I will grant
10:06:40 11 150. I have reviewed the motion for the extension of fact
10:06:47 12 discovery and the response. I am going to grant the
10:06:51 13 extension. It seems like both sides are in favor of it. And
10:06:55 14 so discovery will be extended to March 14th, 2025.

10:07:02 15 I am sympathetic to plaintiffs' concerns that are
10:07:06 16 concerning new discovery, so the deadline to issue any
10:07:10 17 additional written discovery, including document subpoenas,
10:07:14 18 will be December 19th, 2024. I understand that there will be
10:07:21 19 instances where information is revealed in a deposition that
10:07:26 20 leads to other sources of written discovery, but that will be
10:07:30 21 limited and the parties will need to establish justification
10:07:33 22 on why they could not have asked for it before, in other
10:07:37 23 words, it is news to us that we learned in the deposition.

10:07:41 24 There will be no further extensions of fact
10:07:44 25 discovery absent exceptional circumstances and a showing of

10:07:48 1 good cause, or good use, of the extension you are getting now.

10:07:53 2 So that will be laid out in a minute order, but March
10:07:57 3 14th, fact discovery closes.

10:07:59 4 MR. GAINER: Thank you.

10:08:01 5 MS. ROMELFANGER: Thank you, Judge.

10:08:02 6 THE COURT: I think that takes care of all the
10:08:04 7 outstanding issues with the exception of 121, which we will
10:08:08 8 come back in December and work on.

10:08:10 9 MR. STARR: And regarding 121, which I believe is the
10:08:13 10 document production from the City, since the last time we were
10:08:17 11 here I believe we only got a handful of documents, I think it
10:08:20 12 is under 50 pages of documents, so we are still waiting and we
10:08:23 13 have followed up with the City.

10:08:25 14 THE COURT: Okay.

10:08:25 15 MS. KRAUCHUN: All I can say, Judge, is we continue
10:08:27 16 to produce as we represented to the Court at the last court
10:08:30 17 hearing, and we expect to have that done by December.

10:08:33 18 THE COURT: All right.

10:08:34 19 Thank you.

10:08:35 20 ALL RESPOND: Thank you.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Krista Burgeson, CSR, RMR, CRR November 20, 2024
Federal Official Court Reporter Date

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